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March 17, 2006

BY ELECTRONIC FILING

Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Room TW-B204
Washington, DC 20554

Re: Oral and Written *Ex Parte* Presentations
WT Docket No. 05-211

Dear Ms. Dortch:

Council Tree Communications, Inc. ("Council Tree") hereby gives notice of oral and written *ex parte* presentations in the referenced proceeding. The substance of Council Tree's oral presentations is summarized in the enclosed written material, which was also furnished as part of the presentations.

Council Tree's presentations were made by Jonathan Glass and me to Commissioner Adelstein and Barry Ohlson of the office of Commissioner Adelstein, to Commissioner Copps and John Giusti of the office of Commissioner Copps, and to Jim Schlichting, Gary Michaels, and Margaret Wiener (participating via telephone) of the Wireless Telecommunications Bureau.

One copy of Council Tree's written presentation is being submitted electronically herewith pursuant to Sections 1.1206(b)(1) and (b)(2) of the Commission's Rules.

Sincerely,

/s/ George T. Laub

George T. Laub

Enclosure

The Commission's Further Notice of Proposed Rulemaking

**Withholding Auction Preferences When Designated Entities
Have Material Relationships with National Wireless Carriers**



Council Tree Communications, Inc.

**Written Ex Parte Presentation
WT Docket No. 05-211**

March 16, 2006

Proceeding Status

Thank you for your time with us to review the status of the FNPRM

- ▶ **In the FNPRM the Commission tentatively concluded that designated entity (“DE”) preferences should not be awarded to an entity having a material relationship with a large wireless carrier**
 - Addressing national wireless carriers with wireless revenues > \$5 billion
- ▶ **Comments / Replies overwhelmingly support the Commission proposal**
 - 35 Comments representing 46 companies
 - Only 5 opposed
 - 17 Reply Comments representing 60 companies
 - Only 5 opposed
 - The Congressional Black Caucus has also weighed in to support the new rule
- ▶ **The supporters include a diverse array of groups**
 - DEs
 - Rural telephone / wireless companies
 - Small and mid-sized wireless companies
 - Consumer groups and minority groups

Proceeding Status (continued)

- ▶ **Not surprisingly, the opposition consisted only of a few national carriers, two related DEs, and CTIA**
 - Verizon Wireless
 - Cingular (filed reply comments only)
 - T-Mobile
 - CTIA
 - Cook Inlet (a DE associated with T-Mobile)
 - Wirefree Partners (a DE associated with Sprint)

- ▶ **Notable in the absence of their own comments are:**
 - Sprint-Nextel
 - Alltel

Some Points Raised

Opponents argued: ***“National carrier relationships with DEs comply with the Commission’s ownership and control rules – so no problem.”***

- ▶ Whether or not these existing relationships comply with ownership and control rules, **they are permitting national wireless service providers to extend their influence in the CMRS industry**

- ▶ **National wireless service providers do not need the benefit of government-sponsored auction preferences to extend their dominant positions**
 - Together, they demonstrably control 90+% of the industry today
 - Neither Congress nor the FCC intended this result
 - That is the problem that the opposition sidesteps!

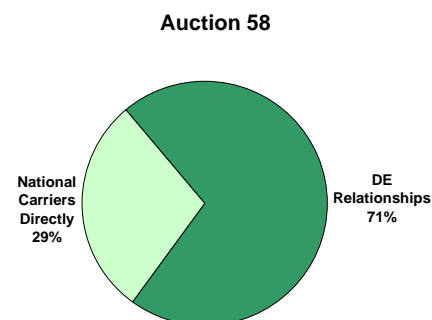
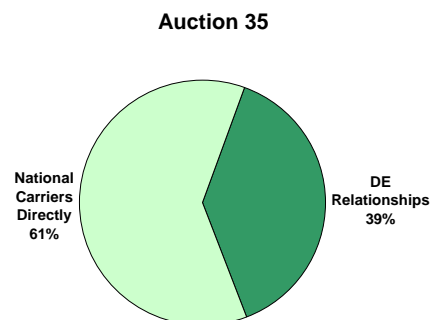
Recent PCS Auction Results

The problem is underscored by data clearly showing that national wireless carriers increasingly use DE investments to access additional CMRS spectrum

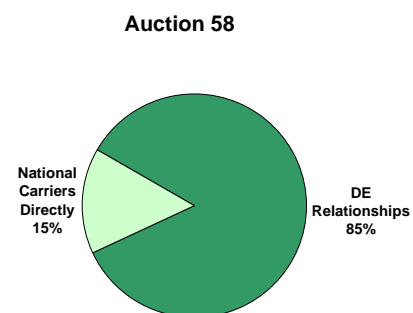
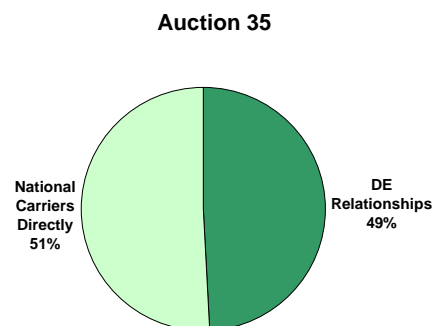
How National Carriers Amass Spectrum

(Directly or via DE Relationships)

Measured by:
**Net License
Purchase Price**



Measured by:
By MHz-POPs



► **Importantly, opponents ignore this data, offering none in response**



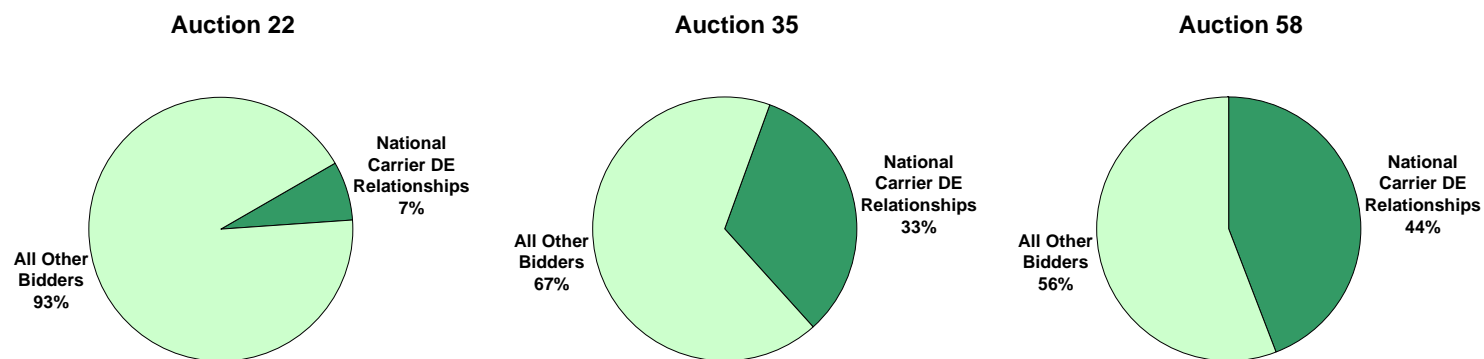
(1) National carrier DEs include: Vista PCS (Verizon), Cook Inlet/VS GSM VII PCS (T-Mobile), Edge Mobile (Cingular) and Wirefree Partners III (Sprint).

Recent PCS Auction Results (continued)

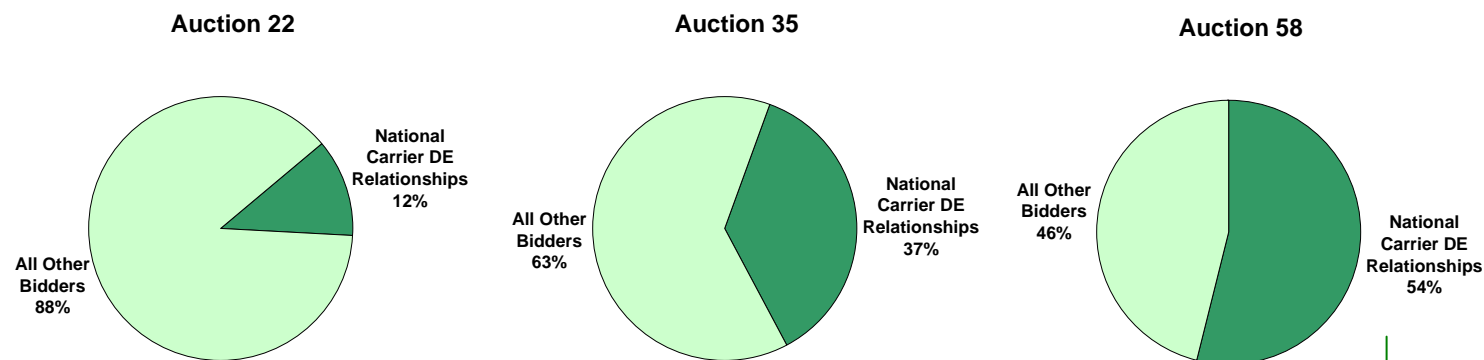
The Problem is further underscored by data clearly showing that DEs associated with national carriers win very large and growing shares of CMRS auction licenses

Spectrum Won by DEs with National Carrier Relationships

By Net License
Purchase Price



By MHz-POPs



► An accelerating trend with clear implications for Auction 66

Some Points Raised (continued)

Some opponents argued that ***“We are just helping DEs get access to capital”***

- ▶ **That is a worthy goal in the abstract**
 - Indeed, DEs must have access to sources of capital and industry and technical expertise to survive

- ▶ **But allowing already-dominant national wireless service providers to provide that capital and expertise is increasingly contrary to the rationale of the DE preference program**
 - In its comments, T-Mobile acknowledged that such relationships are “helpful to both companies”
 - National wireless service provider SEC filings reveal the extension of these carriers’ influence through DE relationships

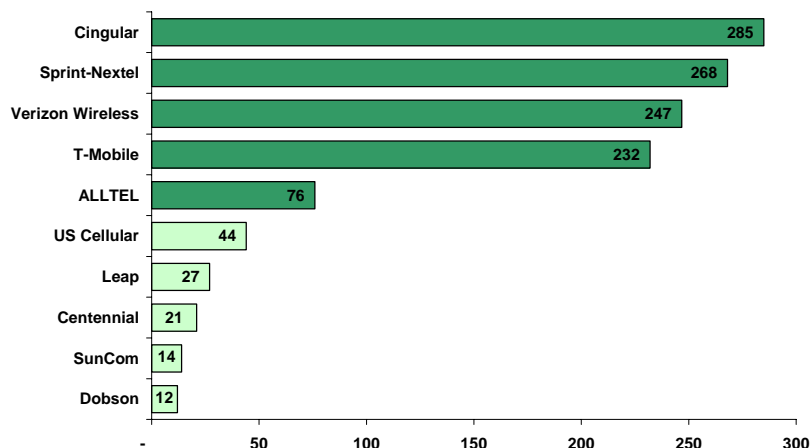
Some Points Raised (continued)

Some opponents argued *“You have not proven that the wireless industry is dominated by the large national carriers – the Commission approved large scale wireless mergers involving some of those carriers”*

- ▶ **In the record of this case is evidence of the profound concentration of CMRS industry control by national wireless carriers**
 - Even T-Mobile notes that “recent mergers and acquisitions have resulted in much of the currently available spectrum becoming consolidated with a few large wireless carriers”
- ▶ **Yet, the Commission does not need to make a finding that the CMRS market is not effectively competitive in order to update DE rules**
 - **At issue is whether the DE program is achieving 309(j) goals:**
 - To secure opportunities to participate in the provision of spectrum-based services for those who would otherwise be excluded under a system of competitive bidding
 - To promote the resulting diversification and competition
 - **This is an entirely different undertaking than the imposition of an industry-wide spectrum cap or a market-specific merger review, and the different types of proceedings should not be confused**

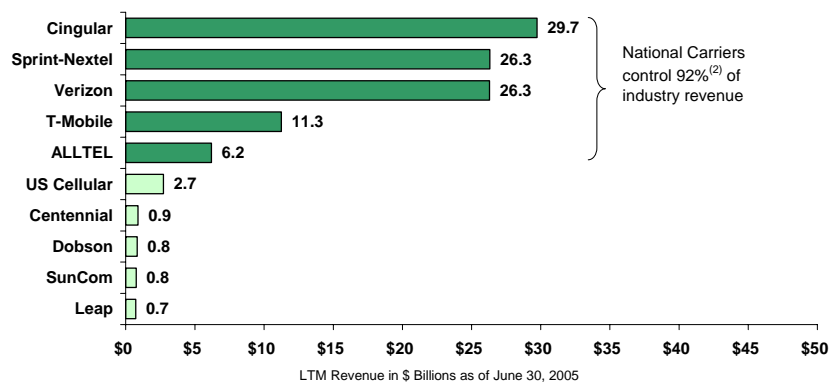
National Carrier Metrics

Top-10 Public Wireless Carriers -- Covered POPs⁽¹⁾
(in millions)



⁽¹⁾ Source: As publicly available form Company Reports, Bear Stearns "US Wireless Industry -- January 2006", Lehman Brothers Equity Research -- "Leap Wireless International, January 23, 2006" -- does not include data on private companies such as MetroPCS

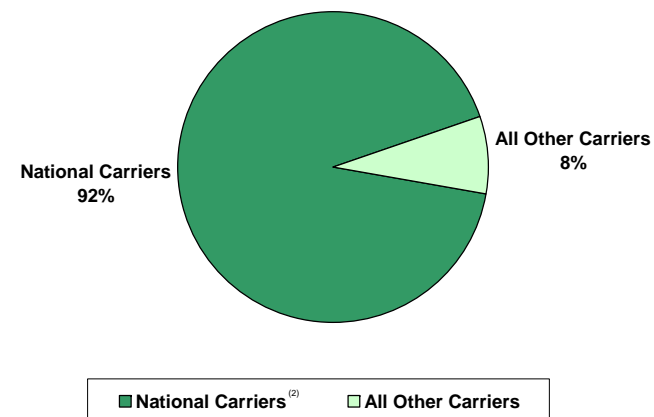
Top-10 Public Wireless Carriers - Service Revenue⁽¹⁾
(in \$ billions)



⁽¹⁾ Carrier revenue based on SEC filings and company reports. National Carriers defined as Cingular, Sprint, Verizon Wireless, T-Mobile and Alltel. Does not include private companies such as MetroPCS

⁽²⁾ Total industry LTM revenue of \$108.5 billion based on CTIA's Semi-Annual Wireless Industry Survey for June 2005

U.S. Wireless Industry Service Revenue⁽¹⁾



⁽¹⁾ Last Twelve Months as of June 30, 2005. Total industry LTM revenue of \$108.5 billion based on CTIA's Semi-Annual Wireless Industry Survey for June 2005

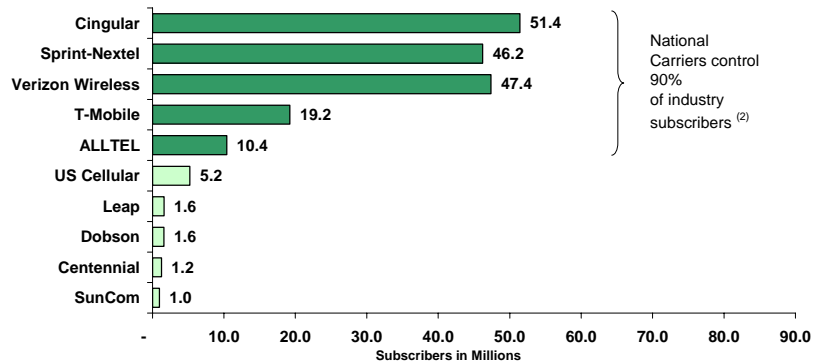
⁽²⁾ Carrier revenue based on SEC filings and company reports. National Carriers defined as Cingular, Sprint, Verizon Wireless,

- ▶ The data clearly underscores industry concentration
- ▶ And the \$5 billion wireless revenue threshold properly captures a national wireless carrier
- ▶ Strong, fact based analytical record for such a cutoff

National Carrier Metrics (continued)

A solid record of data convincingly demonstrates national carrier dominance

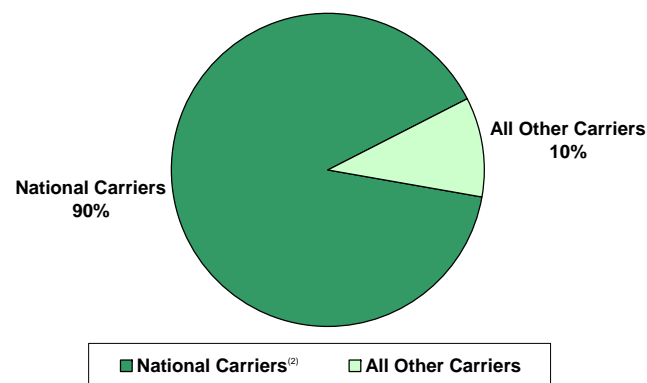
Top-10 Public Wireless Carriers Subscribers⁽¹⁾
(in millions)



⁽¹⁾ As of June 30, 2005. Carrier subscribers based on SEC filings and company reports. National Carriers defined as Cingular, Sprint and its affiliates, Verizon Wireless, T-Mobile and Alltel. Does not include private companies such as MetroPCS

⁽²⁾ Total industry subscribers of 194.5 million based on CTIA's Semi-Annual Wireless Industry Survey for June 2005

U.S. Wireless Industry Subscribers⁽¹⁾



⁽¹⁾ As of June 30, 2005. Total industry subscribers of 194.5 million based on CTIA's Semi-Annual Wireless Industry Survey for June 2005

⁽²⁾ Carrier subscribers based on SEC filings and company reports. National Carriers defined as Cingular, Sprint and its affiliates, Verizon Wireless, T-Mobile and Alltel

► And again, opponents ignore this data, offering none in response

Some Points Raised (continued)

Some opponents argued *“Why not extend the prohibition to all large companies with significant interests in communications services”*

- ▶ **The only demonstrated problem relates to national wireless carriers**
 - Other communications services companies are not dominating the CMRS industry
- ▶ **If adopted, such an expanded prohibition would deny DEs access to important sources of capital and expertise**
 - With no appreciable policy benefit
- ▶ Undertaking to identify distinctions among such entities for the purposes of a prohibition **would dramatically complicate and delay this proceeding**

The Commission Has the Right Approach

- ▶ **The answer for the Commission is to use common sense based on the record of the case**
 - This was the intent of Congress when it enacted Section 309(j)
- ▶ **The record of the case clearly shows that the Commission's DE preferences are increasingly being used to extend national carrier dominance**
- ▶ **No party would be denied the right to obtain spectrum or required to divest existing licenses as a result of this rulemaking**
- ▶ **National wireless service providers simply should not have their influence extended with the help of government-sponsored preferences**